

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



KEVIN BARBER,

Plaintiff,

v.

21-CV-960 (JLS) (MJR)

SERGEANT PETER SCHEIN,
SERGEANT GARY SZPYLMAN,
CORRECTIONAL OFFICER PHILIP
KOZLOWSKI and CORRECTIONAL
OFFICER MARTIN WOZNAK,

Defendants.

DECISION AND ORDER

Pro se Plaintiff Kevin Barber commenced this civil rights action, pursuant to 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights while he was a pretrial detainee at the Erie County Correctional Facility. *See* Dkt. 15. The case has been referred to United States Magistrate Judge Michael J. Roemer for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 28.

On December 2, 2024, Defendants filed a letter requesting that this lawsuit be dismissed based on Plaintiff's death during the pendency of the action, and/or Plaintiff's failure to advise the Court of a change in address. Dkt. 34. No response to the letter has been filed.

On April 11, 2025, Judge Roemer issued a Report and Recommendation ("R&R"), recommending that "this action be dismissed pursuant to Federal Rule of Civil Procedure 25(a) or, alternatively, pursuant to Local Civil Rule 5.2(d), which

requires that Plaintiff inform the Court of any change in address.” Dkt. 35 at 3. No party objected to the R&R, and the time to do so has expired.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court has carefully reviewed the R&R and the relevant record. Based on that review, the Court accepts and adopts Judge Roemer’s recommendation.

For the reasons above and in the R&R, this action is DISMISSED. The clerk of court shall close this case.

SO ORDERED.

Dated: May 2, 2025
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE